

Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Alisal Union School District)
Salinas, California)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File Nos. SLD-234518, 234939

CC Docket No. 96-45

CC Docket No. 97-21 ✓

ORDER

Adopted: January 29, 2002

Released: January 30, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by Alisal Union School District (Alisal Union), Salinas, California.¹ Alisal Union seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to reject Alisal Union's appeal on the grounds that it was untimely filed.² For the reasons set forth below, we deny Alisal Union's Request for Review in part and dismiss its Request for Review in part.

2. SLD issued a Funding Commitment Decision Letter on July 23, 2001, denying Alisal Union's request for discounted services under the schools and libraries universal service support mechanism.³ Specifically, SLD denied Alisal Union's request for discounts for telecommunications services, Funding Request Number (FRN) 548652.⁴ On October 12, 2001, Alisal Union filed an appeal of SLD's decision, asserting that it would not have filed its FCC

¹ Letter from Glenn Della Maggiore, Alisal Union School District, to Federal Communications Commission, filed October 12, 2001 (Request for Review).

² *Id.* In addition to the Administrator's Decision on Appeal, we understand that Alisal wishes to appeal a SLD decision with respect to SLD application number 234939. This application, however, is still pending SLD's review.

³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Glenn Della Maggiore, Alisal Union School District, dated July 23, 2001 (Funding Commitment Decision Letter).

⁴ *Id.*

Form 470 without a completed signature.⁵ On October 1, 2001, SLD issued an Administrator's Decision on Appeal indicating that it would not consider Alisal Union's appeal because it was received more than 30 days after the Funding Commitment Decision Letter was issued.⁶ Alisal Union subsequently filed the instant Request for Review with the Commission.

3. Under section 54.720(b) of the Commission's rules, an appeal must be filed with the Commission or SLD within 30 days of the issuance of the decision that the party seeks to have reviewed.⁷ Documents are considered to be filed with the Commission or SLD only upon receipt.⁸ The 30-day deadline contained in section 54.720(b) of the Commission's rules applies to all requests for review filed by a party affected by a decision issued by the Administrator.⁹ Because Alisal Union failed to file an appeal of the July 23, 2001 Funding Commitment Decision Letter within the requisite 30-day appeal period, we affirm SLD's decision to dismiss Alisal Union's appeal to SLD as untimely and deny the instant Request for Review.

4. To the extent that Alisal Union is requesting that we waive the 30-day deadline established in section 54.720(b) of the Commission's rules, we deny that request.¹⁰ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.¹¹ Alisal Union has not shown good cause for the untimely filing of its initial appeal. Alisal Union explains that it did not receive the Funding Commitment Decision Letter until August 7, 2001 and that it could not draft its appeal until September 10, 2001, when key personnel associated with the E-rate program were expected to return from summer recess.¹² Alisal Union admits that, as a result, it did not file its appeal of the Funding Commitment Decision Letter until the 30-day appeal period had passed.¹³

⁵ Letter from Glenn Della Maggiore, Alisal Union School District, to Schools and Libraries Division, Universal Service Administrative Company, filed October 12, 2001 (Request for Administrator Review).

⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Rabbi Jacob Zucker, Alisal Union School District, dated September 28, 2001 (Administrator's Decision on Appeal).

⁷ 47 C.F.R. § 54.720(b).

⁸ 47 C.F.R. § 1.7.

⁹ We note that, due to recent disruptions in the reliability of the mail service, the 30-day appeal period has been extended by an additional 30 days for requests seeking review of decisions issued on or after August 13, 2001. *See Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. Dec. 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, (Com. Car. Bur. rel. Dec. 28, 2001) and (Com. Car. Bur. rel. Jan. 4, 2002). Because the July 23, 2001 Funding Commitment Decision Letter was issued before August 13, 2001, the extended appeal period does not apply to Alisal Union.

¹⁰ *See* 47 C.F.R. § 54.720(b).

¹¹ *See* 47 C.F.R. § 1.3.

¹² Request for Review.

¹³ *Id.*

5. We conclude that Alisal Union has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹⁴ In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting its appeal to SLD within the established deadline if the applicant wishes its appeal to be considered on the merits.

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of adhering strictly to its filing deadlines.¹⁵ In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeal to SLD if it wishes its appeal to be considered on the merits. An applicant must take responsibility for the action or inaction of those employees, consultants and other representatives to whom it gives responsibility for submitting timely appeals of SLD funding decisions on its behalf. Here, Alisal Union fails to present good cause as to why it could not timely file its appeal to SLD. We therefore find no basis for waiving the appeal filing deadline.

7. To the extent that Alisal Union wishes to appeal a SLD decision with respect to SLD application number 234939. This application, however, is still pending SLD's review. The Commission's rules regarding appeals of SLD decisions do not contemplate simultaneous requests to the Commission and the Administrator.¹⁶ In this case, because Alisal Union has a request pending before the Administrator for review of SLD application number 234939, we dismiss Alisal Union's Request for Review to the Commission without prejudice insofar as this SLD application is concerned. Once the Administrator has issued its decision on Alisal Union's initial request with respect to SLD application number 234939, Alisal Union may then appeal to the Commission if it believes such appeal is warranted at that time.¹⁷ For these reasons, with respect to SLD application number 234939, we dismiss Alisal Union's Request for Review to the Commission without prejudice.

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁵ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. rel. Nov. 24, 2000), para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").

¹⁶ 47 C.F.R. § 54.720 (allowing appeals to either the Commission or the Administrator, but tolling the filing period with the Commission, when an applicant has an appeal pending with the Administrator, until the Administrator issues a decision on the appeal).

¹⁷ See 47 C.F.R. §§ 54.719 – 54.725 (setting forth rights of review, filing deadlines, standards of review, and other rules pertaining to Commission review of the Administrator's decisions).

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by Alisal Union School District, Salinas, California October 12, 2001, IS DENIED IN PART and IS DISMISSED WITHOUT PREJUDICE IN PART.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Mark G. Seifert" followed by a stylized flourish or set of initials.

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau